

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

**Minutes
September 28, 2006
1:00 p.m.**

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, September 28, 2006 in Nashville, Tennessee at 9:30 a.m. Chairman John Jones, Commissioner Cynthia Bond and Commissioner Harlan Mathews were present. Executive Director Danielle Elks, CLEO Mark Hutchens, SAC Mike Cawthon, ASAC Andy Woodall, and SA Matthew Larkins, from the staff, were present.

1. **The Minutes for July 20 and August 17, 2006 Commission Meeting were approved.**

2. **RETAIL PACKAGE STORES**

- A. **TOTAL PACKAGE
NEWBERN, TENNESSEE (DYER COUNTY)**

Licensee/Seller: Bettye Cannon
Applicant/Buyer: Total Package, Inc.
Stockholders: Cathy and James Brown

Before the Commission is a request for a transfer of ownership of the retail store currently located at 151 Highway 77 West in Newbern, Tennessee. Cathy and James Brown wish to purchase the business and land from Bette Cannon for \$250,000—including inventory. The stockholders of the corporation own the property, and will lease to the corporate applicant. Financing is based upon a loan in the amount of \$262,000 with First Citizens. All documentation has been submitted with the exception of the Bill of Sale.

Discussion/Action Taken:

Cathy Brown was present at the meeting. Director Elks reviewed the application for the Commissioners stating that the staff has received all documentation and recommended approval. Commissioner Bond made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

- B. **LIZZ'S LIQUOR STORE
OAK RIDGE, TENNESSEE (ANDERSON COUNTY)**

Licensee/Seller: Sandra Cameron
Applicant: Kenneth Montgomery

Before the Commission is a request for transfer of ownership of the retail store located at 1505 Oak Ridge Turnpike, in Oak Ridge, Tennessee. Mr. Kenneth Montgomery wishes to purchase the business from Ms. Sandra Cameron for \$120,000. Financing is based upon a promissory note with the current owner in the amount of \$40,000 and personal funds in the amount of \$80,000. The lease is between the applicant and David Dunlap: monthly rent of \$1200 with the term of the lease for five years. If approved, the applicant wishes the business name to Lizz's Wine and Spirits. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Use and Occupancy;
- c. Acknowledgement of the Rules/Regulations; and
- d. Verification of personal funds.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. She recommended approval upon submission of the documents on the agenda.

Chairman Jones made a motion to approve upon submission of the remaining documents. Commissioner Bond seconded the motion and it passed with 3 ayes.

Commissioner Mathews made a motion to approve name change. Commissioner Bond seconded the motion and it passed with 3 ayes.

**C. EAST END LIQUORS
TIPTONVILLE, TENNESSEE (LAKE COUNTY)**

Licensee/Seller: Gwendolyn Jean Jones
Applicant/Buyer: Bobby Joe Jones

Before the Commission is a request for a transfer of ownership of the retail business currently located at 1315 Church Street in Tiptonville, Tennessee. Mrs. Gwendolyn Jones wishes to transfer her ownership in the store to her husband, Bobby Joe Jones, as a gift. If approved, Mr. Jones will operate the business as a sole proprietorship. Mr. Jones owns the property where the business is located. All documentation has been submitted with the exception of the following:

- a. Acknowledgement of the Rules and Regulations; and
- c. Affidavit of Publication from newspaper.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. She stated that the staff has received all remaining documentation and recommended approval. Commissioner Bond made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**D. LIQUOR LOCKER
TULLAHOMA, TENNESSEE (COFFEE COUNTY)**

Licensee: Jackson's Wine and Spirits, Inc.
Stockholder: Donald Jackson

Before the Commission is a request to transfer location from 110 West Hogan Street to 500 N. Jackson Street. Mr. Jackson owns the space/property at 500 N. Jackson Street: this space is adjacent to, and shares a wall with the existing location. Mr. Jackson wishes to combine locations, by removing the shared wall and changing the entrance of the business from Hogan Street to Jackson Street: this change would result in a new address. The entrance on Hogan would then be closed to the general public. With the additional space, the new location would provide better access for the general public. All documentation has been submitted.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. She stated that the staff has received all documentation, and recommended approval. Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

**E. BACCHUS NORTHGATE PACKAGE STORE
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

Licensee: Robert and Diann Georgitso

Before the Commission is a request to transfer location from 625 Northgate Mall to 5721 Highway 153, Suite 119 in Hixson, Tennessee. Mr. and Mrs. Georgitso advise that their current lease expired in December, 2005; since that time, the licensee has been on a month-to-month lease. The current landlord desires to renovate the existing property—upon which new, less desirable terms, for the lease would be implemented. Additionally, new businesses have entered the property that is not conducive to the retail business, and other businesses have closed. The licensee desires to change its location to a new site that is requiring some remodeling. All documentation has been submitted. If approved, the licensee seeks further approval to change its business name to Bacchus Wine and Spirits.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. She stated that the staff has received all documentation and recommended approval. Chairman Jones made a motion to approve. Commissioner Mathews seconded the motion and it passed with 3 ayes.

**F. CHICKASAW WINE (Currently d/b/a ARTHUR'S OUTLET)
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Licensee/Seller: Tillman-Poplar, LLC
Stockholders: Robert Loeb
Applicant/Buyer: Kyle Alexander

Before the Commission is a request to transfer ownership of the store located at 2948 Poplar in Memphis, Tennessee. Mr. Kyle Alexander wishes to purchase the business for \$60,000. Financing is based upon existing personal funds. Loeb Brothers Realty, LP would lease the business to Mr. Alexander for \$2999.33/month initially, eight year term. The Commission should note that an appeal of the issuance of the Certificate of Compliance has been filed with the Shelby County Chancery Court by Justin Foster, owner of Midtown Wine and Spirits, and Robert Baumgarten, owner of Walnut Grove Wine and Spirits. The Plaintiffs' position is that a certificate of compliance should not have been issued to the applicant because the current licensee was not an on-going business, and thus, the applicant is not grandfathered in at the location. The Plaintiffs' further position is that because the applicant is not grandfathered in, then the location is too close to an existing library and another liquor store. All documentation has been received with the exception of the following:

- a. Use and Occupancy permit;
- b. TABC Inspection; and
- c. Acknowledgement of the Rules and Regulations.

Discussion/Action Taken:

Dan Haskell, attorney, was present at the meeting. Mr. Haskell is representing the Plaintiffs in the lawsuit, Justin Foster and Robert Baumgarten. Director Elks reviewed the application for the Commissioners. Director Elks verified the applicant submitted a Certificate of Compliance issued by the City of Memphis in conjunction with the application. Director Elks stated that the staff was notified that Mr. Foster and Mr. Baumgarten were opposing the issuance of the Certificate of Compliance and had filed suit in Chancery Court. Their position is that this location should not be grandfathered in for a retail license for various

reasons—including the proximity to a library and existing retail stores. The Court issued a Restraining Order against Mr. Alexander and prohibited him from going forward with his application. Dan Haskell stated that the City of Memphis has a 1500 foot distance requirement. He stated that in this case, this liquor store is within 500 feet of the main library of Memphis. The store was grandfathered in because it predated the construction of the library. He further stated that this store had been out of business for some time. It has been on temporary void with the Tennessee Alcoholic Beverage Commission for some time. He stated that none of this information came to the attention of the Memphis Alcohol Commission. He stated in addition to that, it is too close to another liquor store under the Memphis ordinance. Mr. Haskell advised that this matter has been reviewed by Chancery Court and the Chancellor is signing an Order remanding it to the Memphis Alcohol Commission today with directions that they reconsider issuing the Certificate of Compliance. Mr. Haskell stated it is the wishes of his clients that the Commission defer this matter until such time as the Memphis Alcohol Commission has met its duties under the Order from the Chancellor. Director Elks stated that until yesterday, it was the position of the staff that there was going to be a valid Certificate of Compliance issued and that was what was before the Commission. However, with the temporary restraining order, it is the staff's position that it would be best that the matter be deferred until the Court removes the restraining order. Mr. Haskell stated that if the applicant was pursuing this matter, the applicant would be in contempt of the restraining order. Commissioner Mathews made a motion to defer the matter until the temporary restraining order is lifted and the applicant brings it before the Commission. Commissioner Bond seconded the motion and it passed with 3 ayes.

3. WINERY

A. KEG SPRINGS WINERY HAMPSHIRE, TENNESSEE (LEWIS COUNTY)

Licensee: Rebecca Hamm
Applicant: Keg Springs Winery, LLC
Members: Rebecca Hamm, Gerald Hamm, Mary Hamm, Brian Hamm, and Keg Springs Estates, LLC

Before the Commission is a request for transfer of ownership from Rebecca Hamm as a sole proprietorship to a limited liability company with herself as a member and adding Gerald Hamm, Mary Hamm, Brian Hamm and Keg Springs Estates, LLC as additional members. Gerald Hamm is the owner of the property where the winery is located, and is leasing the property to Keg Springs Winery, LLC for \$2000/month. Keg Springs Estates, LLC is the 100% member of Keg Springs Winery, LLC, with Rebecca Hamm, Brian Hamm, Gerald Hamm and Mary

Hamm as the members of Keg Springs Estates, LLC. All documentation has been submitted with the exception of the following:

- a. Use and Occupancy permit;
- b. Bill of Sale; and
- c. Verification of membership and amount of ownership for Keg Spring Estates, LLC.

Discussion/Action Taken:

Rebecca Hamm was present at the meeting. Director Elks reviewed the application for the Commissioners. She stated that the staff has received all documentation in addition to what is listed on the agenda. Director Elks recommended approval. Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

5. CONTESTED CASES

a. ADMINISTRATIVE CITATION HEARINGS

Addendum is forthcoming.

b. SERVER PERMIT HEARINGS

i. Amelia Manchester

Upon request of the Respondent, the Commission continued this matter until the September, 2006 meeting.

On or about July 17, 2006, Ms. Manchester submitted an application for a server permit which indicated that on July 30, 2005, she had been convicted a felony—assault on a female officer. TABC staff denied this application based upon T.C.A. §57-3-704 which prohibits the issuance of a server permit to anyone who has been convicted of a felony within four years of the date of application. Ms. Manchester has appealed the denial.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. Director Elks stated that Ms. Manchester is currently on three (3) year probation and will have completed her community service and be off of

probation near the end of September. Director Elks stated that she has talked with Elks stated she has talked with Ms. Manchester's probation officer, and her probation officer indicates that Ms. Manchester received the equivalent of Tennessee's pre-trial diversion. The probation officer stated that in this conversation that Ms. Manchester should not have put down on the application that she was convicted of a felony based on Georgia's terminology because she was a first offender. Director Elks has requested from Ms. Manchester's probation officer a letter memorializing this conversation. At this time, the staff has not received a copy of this letter. Director Elks stated that Ms. Manchester would have been at the meeting, but she is still in Georgia because she is completing her probation in community service. Director Elks informed Ms. Manchester that she would not have to be present and that the Commission would be advised of her position. Director Elks stated at this point, she is not being harmed as she is not in Tennessee, and she requested that the Commission continue the matter again until October meeting. Director Elks stated that at that point, she would have the letter from the probation officer. Commissioner Bond made a motion to defer the matter to the October meeting. Commissioner Mathews seconded the motion and it was approved with 3 ayes.

Director Elks suggested that once the staff received the letter from the probation officer for Ms. Manchester that she would be eligible for the server permit. Director Elks requested permission to issue the permit upon receipt of the letter from the probation officer.

Commissioner Mathews made a motion to reconsider the Commission's action. Commissioner Bond seconded the motion and it passed with 3 ayes.

Chairman Jones made a motion to grant the server permit card subject to receipt of the documentation from the State of Georgia outlying that the charge is equivalent of the pre-trial diversion in the Tennessee system and upon receipt of that letter, that Ms. Manchester's server permit card will be issued. Commissioner Bond seconded the motion and it passed with 3 ayes.

ii. Kathryn Lee Ann Jones---Continued from June, 2006 meeting

Ms. Jones has appealed the decision of TABC staff denying her application for a server permit, and has requested a hearing. TABC staff denied Ms. Jones' application for a permit based upon a prostitution conviction on September 30, 2004. T.C.A. §57-3-704 prohibits the issuance of a server permit to anyone who has been convicted of any sex-related crime within eight years of the date of the application.

Action taken at June, 2006 meeting as reflected by the minutes:

Kathryn LeeAnn Jones was present at the meeting. Assistant Carolyn Smith stated that Ms. Jones submitted an application for a server permit to the Memphis TABC office and that the application was denied based on a prostitution conviction that was in September 2004. The statute states that the server permits cannot be issued within eight (8) years of that type conviction.

Chairman Jones requested the staff of what precedence we have set in the past. Director Elks stated that the Commission has continued certain matters where the convictions that require an eight (8) year time period, if those convictions have fallen between the four (4) and the eight (8) year time period, we have continued those matters and allowed the individual to continue to operate under an expired card to see what, if anything, the General Assembly will do to give the Commission some relief. However, the Respondent does not fall within the exception that the Commission has established because her conviction was in 2004.

Chairman Jones made a motion to continue the matter to the September Commission meeting. Commissioner Mathews seconded the motion and it passed with 2 ayes.

Discussion/Action Taken:

Kathryn LeAnn Jones was present at the meeting. Ms. Kathryn Jones presented Chairman Jones with a copy of a letter from Judge Tim Dwyer of the General Sessions Criminal Court of Shelby County. Chairman Jones read the letter from Judge Dwyer. The Commissioners re-stated their opposition to the harshness of the time frame listed in the statutes dictating the denial of server permits based upon certain convictions. Commissioner Bond made a motion to uphold the denial of the server permit card. Commissioner Mathews seconded the motion and it passed with 3 ayes.

c. TABC v. JAKES, Inc. Docket Number: 33.201-092026J

On August 7, 2006, Administrative Judge Leonard Poque entered an Initial Order revoking the restaurant liquor-by-the-drink license held by Jakes, Inc., sole stockholder—Mona Sanderson. This revocation was based upon the refusal of the licensee to submit requested documentation related to an on-going investigation by the TABC. A Notice of Review was filed on August 15, 2006, and is before the Commission for review.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. Director Elks stated that on October 2005, SA Farmer conducted a food service audit at the establishment doing business as Jakes, and requested certain documentation covering a three (3) month period. The licensee failed to submit this documentation. SA Farmer sent a second request to the establishment for the documentation, giving the licensee two additional months to get the information to her. Again, the licensee did not provide the requested information. SAC Cawthon went to the premises in person and talked with Ms. Mona Sanderson, sole stockholder of the licensee. He advised her that she had one week to submit the requested documentation. Again, she did not provide the documentation. Therefore, the matter was set for a hearing to revoke the license because of the failure to maintain the requirements of a restaurant, and secondly, and most importantly, the failure to submit requested documentation pursuant to an investigation to the Commission. TABC Rule 0100-1-.03(5) sets forth that a license may be revoked for the failure of a licensee to supply requested information related to an investigation. Judge Poque entered an Initial Order revoking the permit, not on the basis of the food service audit, but because the licensee failed to provide requested information to the TABC related to an on-going investigation. Director Elks stated that pursuant to TABC policy, the staff filed a Notice of Review of the Initial Order for review by the Commission. Director Elks also stated the license has since expired and has not been renewed. Ms. Sanderson is out of business and the landlord has taken over the business, made application and has been approved for a license. The reason the staff is requesting the Commission to review this is to have the Initial Order set as precedence by the Commission.

Commissioner Mathews made a motion to uphold the Initial Order. Commissioner Bond seconded the motion and it passed with 3 ayes.

- 4. SPECIAL OCCASION LICENSES**
- 5. CONSUMER EDUCATION SEMINAR LICENSES**
- 6. PERSONNEL** – Heidi White, Special Agent 1, was hired in the Knoxville Post of Duty. She will be starting employment on October 1, 2006. Ms. White was employed by the Chattanooga Police Department.
- 7. BUDGET**
- 8. CONSENT ORDERS**
- 9. PENDING MATTERS LIST**

- 10. MISCELLANEOUS** – SAC Mike Cawthon went to the Metropolitan Nashville Police Department to determine the background of Christopher Pitts and found out that Christopher Pitts had been convicted of the charge. SAC Cawthon stated that Mr. Pitts had misled the Commission when he said that he had attempted to pay the citation and just could not make payments right now. Mr. Pitts had not made any payments on his citation since 2003 whenever he was convicted. It had already been turned over to a collection agency and has been at the collection agency for over two (2) years. Mr. Pitts has started repaying them. SAC Cawthon stated that Mr. Pitts was suppose to submit copies of receipts, but has failed to do so.

Chairman Jones stated that Mr. Pitts has not performed as completely as was expected. Chairman Jones stated that the Commission would wait another month to see if he does perform as he stated. SAC Cawthon stated that Mr. Pitts has been difficult to get a hold of.

Commissioner Mathews stated that the Commission should make an attempt to change the law so that the Commission can administer justice rather than tyranny for the issuance of server permit cards.

Chairman Jones stated that this should be noted in the event one of these cases does get taken to the Chancery Court or in the event it does go before the Legislature so the Legislature can understand the concern that the Commission has.

- 11. DATE OF NEXT MEETING** – October 26, November 16 and December 14, 2006 at 1:00 p.m.

There being no further business the meeting was adjourned.

Shari Danielle Elks
Executive Director

John A. Jones
Chairman